

EXHIBIT

1



State of Alabama Unified Judicial System Form ARCiv-93 Rev. 9/18	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Ca: 41 Date of Filing: 05/28/2020 JUDGE OF TRIAL: MISSY HOMAN, CLERK Judge Code:
GENERAL INFORMATION		
IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA BYRON CLARK v. UNITED OF OMAHA LIFE INSURANCE COMPANY		
First Plaintiff: <input type="checkbox"/> Business <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other		
First Defendant: <input checked="" type="checkbox"/> Business <input type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other		
NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:		
TORTS: PERSONAL INJURY <input type="checkbox"/> WDEA - Wrongful Death <input type="checkbox"/> TONG - Negligence: General <input type="checkbox"/> TOMV - Negligence: Motor Vehicle <input type="checkbox"/> TOWA - Wantonness <input type="checkbox"/> TOPL - Product Liability/AEMLD <input type="checkbox"/> TOMM - Malpractice-Medical <input type="checkbox"/> TOLM - Malpractice-Legal <input type="checkbox"/> TOOM - Malpractice-Other <input type="checkbox"/> TBFM - Fraud/Bad Faith/Misrepresentation <input type="checkbox"/> TOXX - Other: _____	OTHER CIVIL FILINGS (cont'd) <input type="checkbox"/> MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/ Enforcement of Agency Subpoena/Petition to Preserve <input type="checkbox"/> CVRT - Civil Rights <input type="checkbox"/> COND - Condemnation/Eminent Domain/Right-of-Way <input type="checkbox"/> CTMP - Contempt of Court <input checked="" type="checkbox"/> CONT - Contract/Ejectment/Writ of Seizure <input type="checkbox"/> TOCN - Conversion <input type="checkbox"/> EQND - Equity Non-Damages Actions/Declaratory Judgment/ Injunction Election Contest/Quiet Title/Sale For Division <input type="checkbox"/> CVUD - Eviction Appeal/Unlawful Detainer <input type="checkbox"/> FORJ - Foreign Judgment <input type="checkbox"/> FORF - Fruits of Crime Forfeiture <input type="checkbox"/> MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition <input type="checkbox"/> PFAB - Protection From Abuse <input type="checkbox"/> EPFA - Elder Protection From Abuse <input type="checkbox"/> FELA - Railroad/Seaman (FELA) <input type="checkbox"/> RPRO - Real Property <input type="checkbox"/> WTEG - Will/Trust/Estate/Guardianship/Conservatorship <input type="checkbox"/> COMP - Workers' Compensation <input type="checkbox"/> CVXX - Miscellaneous Circuit Civil Case	
TORTS: PERSONAL INJURY <input type="checkbox"/> TOPE - Personal Property <input type="checkbox"/> TORE - Real Property	OTHER CIVIL FILINGS <input type="checkbox"/> ABAN - Abandoned Automobile <input type="checkbox"/> ACCT - Account & Nonmortgage <input type="checkbox"/> APAA - Administrative Agency Appeal <input type="checkbox"/> ADPA - Administrative Procedure Act <input type="checkbox"/> ANPS - Adults in Need of Protective Services	
ORIGIN: F <input checked="" type="checkbox"/> INITIAL FILING A <input type="checkbox"/> APPEAL FROM DISTRICT COURT O <input type="checkbox"/> OTHER R <input type="checkbox"/> REMANDED T <input type="checkbox"/> TRANSFERRED FROM OTHER CIRCUIT COURT		
HAS JURY TRIAL BEEN DEMANDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)		
RELIEF REQUESTED: <input type="checkbox"/> MONETARY AWARD REQUESTED <input checked="" type="checkbox"/> NO MONETARY AWARD REQUESTED		
ATTORNEY CODE: JEN009 5/28/2020 1:16:34 PM /s/ Robert Willson Jenkins, Jr. MR. Date Signature of Attorney/Party filing this form		
MEDIATION REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNDECIDED		
Election to Proceed under the Alabama Rules for Expedited Civil Actions: <input type="checkbox"/> YES <input type="checkbox"/> NO		

IN THE CIRCUIT COURT OF FLORENCE COUNTY ALABAMA

Byron Clark,

Plaintiff,

V.

United of Omaha Life Insurance Company

Defendant.

CASE NO.:

JURISDICTION

1. Plaintiff, Bryon Clark is a resident citizen of Lauderdale County, Alabama.
2. Defendant, United of Omaha Life Insurance Company (hereinafter referred to as “United of Omaha”) is a foreign corporation that insures the “employee welfare benefit plan” (hereinafter referred to as the “Plan”) that is the subject of this action.
3. Plaintiff at the time that his disability began was employed by Nelson Brother, Inc., as a plant manager at Nelson’s facility in Cherokee, Alabama.
4. Nelson Brothers, Inc., which manufactures and distributes mining explosives.

5. Nelson Brothers, Inc., sponsors an “employee welfare benefit plan” as that term is defined under 29 U.S.C. 1002(1) that provides long term disability benefits for its employees including Byron Clark.
6. United of Omaha insures the Plan referenced above under policy number GLTD-0ALE8. United of Omaha is a fiduciary under ERISA as it both determines eligibility for benefits and pays the benefits pursuant to its contract of insurance.
7. This is an action for benefits under 29 U.S.C. 1132(a)(1)(b) and state courts have concurrent jurisdiction of such matters pursuant to 29 U.S.C.1132(e)(1).

FACTS

8. Plaintiff's last day of work at Nelson Brothers, Inc., was August 18, 2015. Plaintiff was unable to continue to work at his own occupation and any occupation thereafter due to multiple medical problems including degenerative disc disease, diabetes with severe neuropathy in his hands and feet, unsteadiness due to the effects of medication, high blood pressure and heart disease.
9. Under the terms of the Plan, there is a 180 day elimination period. Thus, beginning February 23, 2016, the Defendant commenced payment of long term disability benefits to the Plaintiff.

10. In a letter dated May 31, 2017, United of Omaha informed the Plaintiff that he no longer meets the definition of disabled after April 4, 2016. (It is possible the Defendant meant April 4, 2017, instead of 2016 and this was a typographic error.) In any event, United of Omaha invited Plaintiff to appeal this decision within 180 days if Clark disagreed.
11. In a letter dated October 26, 2017, the Plaintiff appealed the denial of the Defendant's decision.
12. In a letter dated January 19, 2018, the Defendant upheld its denial of benefits effective again to April 4, 2016. The defendant further informed the Plaintiff that he had exhausted his appeals rights under the Plan; that he had a right to file an action under ERISA 502(a) and that he must do so on or before May 31, 2020.

COUNT I

13. Plaintiff re-adopts and re-alleges all of the jurisdictional and factual allegations previously set forth, as if, fully set out herein.
14. Plaintiff is disabled under the terms of the Nelson Brothers, Inc., a long term disability plan as insured by United of Omaha.
15. Defendant wrongly terminated long term disability benefits April 4, 2016[2017].
16. Plaintiff is disabled from not only his own occupation but any occupation.

WHEREFORE THESE PREMISES CONSIDERED, the Plaintiff prays for a judgment to be entered in his favor and against the Defendant for past due long term disability benefits pursuant to 29 U.S.C. 1132(a)(1)(b); for Order to pay future long term disability benefits until the Plaintiff is no longer disabled, prejudgment interest, and a reasonable attorney fee pursuant to 29 U.S.C. 1132(g).

R. Willson Jenkins

R. Willson Jenkins (ASB-1097-i61R)

Attorney for Plaintiff

310 W. Tombigbee St.

Florence, AL 35630

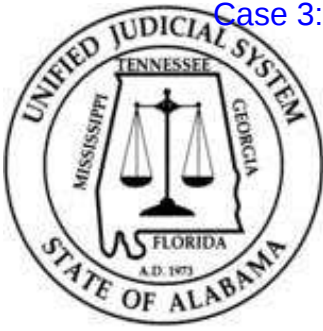
(256) 766-4840 - T

(256) 485-4733 - F

willson@jenkinsandgonce.com

DEFENDANT TO BE SERVED CERTIFIED MAIL BY CLERK

**United of Omaha Life Insurance Company
3300 Mutual of Omaha Plaza
Omaha, NE 68175**



AlaFile E-Notice

41-CV-2020-900165.00

To: Robert Willson Jenkins, Jr. MR.
carmela@jenkinsandgonce.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA

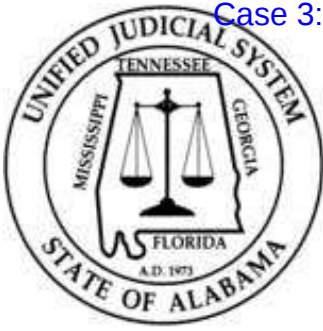
BYRON CLARK V. UNITED OF OMAHA LIFE INSURANCE COMPANY
41-CV-2020-900165.00

The following complaint was FILED on 5/28/2020 1:16:33 PM

Notice Date: 5/28/2020 1:16:33 PM

MISSY HOMAN
CIRCUIT COURT CLERK
LAUDERDALE COUNTY, ALABAMA
200 SOUTH COURT STREET
FLORENCE, AL, 35630

256-760-5728



AlaFile E-Notice

41-CV-2020-900165.00

To: UNITED OF OMAHA LIFE INSURANCE COMPANY
3300 MUTUAL OF OMAHA PLZ
OMAHA, NE, 68175

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA

BYRON CLARK V. UNITED OF OMAHA LIFE INSURANCE COMPANY
41-CV-2020-900165.00

The following complaint was FILED on 5/28/2020 1:16:33 PM

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CIRCUIT COURT CLERK
LAUDERDALE COUNTY, ALABAMA
200 SOUTH COURT STREET
FLORENCE, AL, 35630

256-760-5728

State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS - CIVIL -	Court Case Number 41-CV-2020-900165.00
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IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA
BYRON CLARK V. UNITED OF OMAHA LIFE INSURANCE COMPANY

NOTICE TO: UNITED OF OMAHA LIFE INSURANCE COMPANY, 3300 MUTUAL OF OMAHA PLZ, OMAHA, NE 68175
(Name and Address of Defendant)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),
 Robert Willson Jenkins, Jr. MR.
(Name(s) of Attorney(s))

WHOSE ADDRESS(ES) IS/ARE: 310 W. Tombigbee St, Florence, AL 35630
(Address(es) of Plaintiff(s) or Attorney(s))

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:

☐ You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

☒ Service by certified mail of this Summons is initiated upon the written request of BYRON CLARK
(Name(s))
 pursuant to the Alabama Rules of the Civil Procedure.

05/28/2020 /s/ MISSY HOMAN By: _____
(Date) *(Signature of Clerk)* *(Name)*

☒ Certified Mail is hereby requested. /s/ Robert Willson Jenkins, Jr. MR.
(Plaintiff's/Attorney's Signature)

RETURN ON SERVICE

☐ Return receipt of certified mail received in this office on _____
(Date)

☐ I certify that I personally delivered a copy of this Summons and Complaint or other document to _____
 _____ in _____ County,
(Name of Person Served) *(Name of County)*

Alabama on _____
(Date)

(Type of Process Server)

(Server's Signature)

(Address of Server)

(Server's Printed Name)

(Phone Number of Server)

U.S. Postal Service® CERTIFIED MAIL® RECEIPT

Domestic Mail Only

USPS® ARTICLE NUMBER

9314 7699 0430 0071 9012 03

Certified Mail Fee	\$	
Return Receipt (Hardcopy)	\$	3.55
Return Receipt (Electronic)	\$	2.85
Certified Mail Restricted Delivery	\$	0.00
Postage	\$	0.00
Total Postage and Fees	\$	0.65
	\$	7.05

Postmark Here

USPS

Sent to:

United of Omaha Life Insurance Company
3300 Mutual of Omaha Plaza
Omaha, NE 68175

Reference Information

CV-20-900165 (0001)

Return Receipt (Form 3811) Barcode



9590 9899 0430 0071 9012 05

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

ED HOVAV

C. Date of Delivery

JUN 8 2020

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

1. Article Addressed to Life Insurance Company
 3300 Mutual of Omaha Plaza
 Omaha, NE 68175

FILED IN OFFICE

JUN 11 2020

3. Service Type:

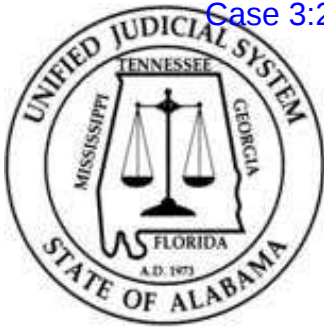
☒ Certified Mail☐ Certified Mail Restricted Delivery

Reference Information

9314 7699 0430 0071 9012 05

2. Certified Mail (Form 3800) Article Number

Delivered to Homay
 1-20-900165 (b)



AlaFile E-Notice

41-CV-2020-900165.00

Judge: GILBERT P SELF

To: JENKINS ROBERT WILLSON JR
carmela@jenkinsandgonce.com

NOTICE OF SERVICE

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA

BYRON CLARK V. UNITED OF OMAHA LIFE INSURANCE COMPANY
41-CV-2020-900165.00

The following matter was served on 6/5/2020

D001 UNITED OF OMAHA LIFE INSURANCE COMPANY

Corresponding To
CERTIFIED MAIL

MISSY HOMAN
CIRCUIT COURT CLERK
LAUDERDALE COUNTY, ALABAMA
200 SOUTH COURT STREET
FLORENCE, AL, 35630

256-760-5728